

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-002542

11/16/2009

HON. RANDALL H. WARNER

CLERK OF THE COURT

C. Danos

Deputy

IN RE THE MARRIAGE OF
SHAUNA ROGERS

REBECCA L OWEN

AND

TODD ROGERS

TODD ROGERS
7978 W YUKON
PEORIA AZ 85382
JESSICA M COTTER

DOCKET-FAMILY COURT CCC
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION OF MARRIAGE

A trial in this dissolution case was held on November 12, 2009. Based on the evidence presented, the court makes the following findings and conclusions, and issues this Decree of Dissolution.

I. DISSOLUTION OF MARRIAGE.

The court finds that at least one of the parties was domiciled in Arizona for more than 90 days immediately before the filing of the Petition; that the conciliation provisions of A.R.S. § 25-381.09 and the domestic relations education provisions of A.R.S. § 25-352 either do not apply or have been met; that the marriage is irretrievably broken and that there is no reasonable prospect for reconciliation.

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To the extent it has jurisdiction to do so, the court has considered and made provisions for maintenance and disposition of property, and, where applicable, support, custody and visitation.

IT IS ORDERED that the marriage between Petitioner/Wife/Mother Shauna Rogers and Respondent/Husband/Father Todd Rogers is dissolved, and each party is returned to the status of a single person effective upon the signing and entry of this Decree.

II. CUSTODY AND PARENTING TIME.

The parties' minor child lived in Arizona with a parent, or a person acting as a parent, for at least six consecutive months or more before this action was commenced (or at least from the time of birth of the child until this action was commenced), such that Arizona is the home state vested with jurisdiction to make a child custody determination pursuant to A.R.S. § 25-1031(A)(1).

The parties agree to joint legal custody, but dispute parenting time. To decide this issue, the court has considered all relevant statutory and non-statutory factors. The court makes the following findings pursuant to A.R.S. §§ 25-403 and 25-403.01.

1. *The wishes of the child's parent or parents as to custody.* Mother requests that Father have parenting time on alternating weekends and for one weekday overnight. Father requests equal parenting time according to a 5-2-2-5 parenting plan.

2. *The wishes of the child as to the custodian.* No evidence was presented regarding the wishes of the child.

3. *The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.* From the evidence presented, the child has bonded relationships with both parents.

4. *The child's adjustment to home, school and community.* From the evidence presented, it appears the child is well adjusted.

5. *The mental and physical health of all individuals involved.* No evidence of any health issues was presented.

6. *Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.* Both parents are likely to allow the child frequent and meaningful continuing contact with the other.

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7. *Whether one parent, both parents or neither parent has provided primary care of the child.* Mother has provided primary care of the child in the past. But Father has provided significant care too. Moreover, now that both parents are working full time, this factor does not weigh heavily in favor of either.

8. *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.* No coercion or duress was used to obtain an agreement regarding custody.

9. *Whether a parent has complied with chapter 3, article 5 of this title.* Both parents have complied with the parenting education requirement.

10. *Whether either parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.* Neither parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.

11. *The agreement or lack of an agreement by the parents regarding custody.* The parties have not reached agreement regarding joint custody, so this factor does not weigh in favor of either party.

12. *Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.* The court finds that neither parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.

13. *The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint custody.* The parties have the ability to cooperate in decision-making about the child.

14. *Whether the joint custody arrangement is logistically possible.* Joint custody is logistically possible.

15. *Domestic violence.* No evidence regarding domestic violence was presented.

The court finds it in the best interest of the child to have equal parenting time with each parent. Each parent has different strengths and the child has a strong relationship with each such that neither parent should have materially more parenting time than the other. It is not in the child's best interests, however, to wake up early on school days only to go to day care, as Father proposes. Rather, it is better for the child that if Father cannot take him to school at the regular

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start time, the child should have the opportunity to spend the morning getting ready for school with Mother.

The court further finds that it is in the child's best interests to have two weeks of uninterrupted vacation with each parent every year. Finally, the court finds that Father's request for four flexible dates per year is not in the child's best interests. If the parents are not at a point in their relationship where they can accommodate each other's requests to deviate from the parenting plan, a flexible time order is more likely to cause conflict than prevent it.

Based on the foregoing, the court finds the following parenting time order to be in the child's best interests.

IT IS ORDERED awarding the parties joint legal custody of the parties' minor child, Logan Rogers (DOB 6/25/03).

IT IS FURTHER ORDERED that the parents shall have parenting time as follows:

1. Mother shall have the child every Week from Sunday at 5:30 p.m. until Tuesday at 5:30 p.m.
2. Father shall have the child every Week from Tuesday at 5:30 p.m. until Thursday at 5:30 p.m.
3. The parties shall alternate weekends, defined as from Thursday at 5:30 p.m. until Sunday at 5:30 p.m.
4. Each parent shall be responsible for dropping the child off and picking him up (or otherwise arranging transportation) to and from school during that parent's parenting time. If Father's work schedule on his parenting day does not permit him to drop off the child at school such that the child otherwise would have to be in day care, Father shall drop off the child at Mother's house at 6:30 a.m. before school.

IT IS FURTHER ORDERED that each parent shall have parenting time with the child according to the holiday and vacation schedule set forth in this order and in the parties' Rule 69 Stipulation filed on November 12, 2009. Holiday and vacation time shall trump the regular week-to-week parenting time when there is a conflict between the two. If there is a conflict between one parent's holiday time and the other's vacation or school break time, the holiday time shall trump the vacation or school break time.

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IT IS FURTHER ORDERED that each parent is entitled to two weeks of vacation time with the child each summer. Each may exercise this time either in one two-week block of time or two one-week blocks. They shall attempt to reach agreement regarding the dates of their respective vacations each year, but if they cannot agree, vacation time shall be determined as follows. In odd-numbered years, Mother shall choose Mother's two-week period first; in even-numbered years, Father shall choose Father's two-week period first. The parent choosing first shall provide notice of his/her two-week period in writing (or e-mail) to the other parent by May 15 of the year, and the other parent shall provide notice of his/her two-week period in writing (or e-mail) by May 31 of the year. Summer vacation time must be exercised between the child's last day of school and first day of school the following year.

IT IS FURTHER ORDERED that, within 30 days of this order, the parties shall submit a parenting plan to the court. If the parenting plan is stipulated, the parties may file it. If the parties disagree about one or more elements contained in the parenting plan, they shall lodge with the court a single parenting plan showing each party's proposed language as to each disputed provision. The court will then determine the language that is in the child's best interests.

III. CHILD SUPPORT.

The relevant financial factors required to be included and the discretionary allowances and adjustments that the court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the child support worksheets filed with this decree, which the court incorporates and adopts as its findings with respect to child support.

IT IS ORDERED that Father shall pay child support to Mother in the amount of \$39 per month, plus \$2.25 per month as and for the Clearinghouse Handling Fee for a total of \$41.25 per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing December 1, 2009 by Wage Assignment.

ISSUED & FILED: Child Support Worksheet (2).

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

IT IS FURTHER ORDERED that, for purposes of determining arrears, Father's child support obligation for the period May 1, 2009 through November 30, 2009 is \$350 per month.

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IT IS FURTHER ORDERED that each parent shall be solely responsible for all day care expenses during that parent's parenting time, and each parent shall be responsible for 50% of all extracurricular activities agreed upon by the parents.

IT IS FURTHER ORDERED that Father shall provide medical insurance for the benefit of the child, and shall provide an insurance card and claim filing information/forms to the other parent. All medical expenses not covered by insurance shall be paid 50% by Father and 50% by Mother.

IT IS FURTHER ORDERED that any tax exemptions applicable to the parties' child shall be divided as follows:

1. Father. Father is entitled to utilize the exemptions in all even-numbered years provided he is current in the payment of all current child support and child support arrearage payments due by December 31 of the year applicable to the exemption. If these conditions are met, Mother shall execute the necessary IRS forms to transfer the exemptions to Father. If not, Mother shall be entitled to claim the exemptions.

2. Mother. Mother is entitled to utilize the exemptions for the child in all odd-numbered years.

A.R.S. § 25-320(B) requires this court to award child support retroactive to the filing of the Petition, taking into account any temporary or voluntary support that has been made. As stated above, the child support obligation for the period May 1, 2009 through November 30, 2009 is \$350 per month. Thus, the total child support obligation for that period is \$2,450. The court finds that Father has already paid \$660 in child support, which is properly credited to the past child support obligation. The total child support arrearage is therefore \$1,790.

IT IS ORDERED entering judgment in favor of Mother and against Father for child support arrears in the amount of \$1,790, representing child support due for the period May 1, 2009 through November 30, 2009.

IT IS FURTHER ORDERED that Father shall pay \$50 per month in addition to the current child support payment toward the child support arrearage until these sums have been paid in full.

LET THE RECORD REFLECT that Father's total support obligation to Mother is \$39 for child support and \$50 for child support arrearages, plus \$2.25 per month as and for the Clearinghouse Handling Fee for a total of \$91.25 per month, effective December 1, 2009.

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IV. PROPERTY AND DEBT.

The court finds the following division of property and allocation of debts to be equitable.

A. Vehicles. The court finds that the following vehicles awarded to the following parties have the indicated values.

IT IS ORDERED awarding the following vehicles to Husband:

1. 2001 Chevy Silverado, \$10,150.
2. 1987 Jeep, \$1,500.
3. Yamaha quad in Father's possession at service of the petition, \$2,300.
4. Trailer, \$737.
5. Honda motorcycle, \$300 in equity.

Total value: \$14,987.

IT IS FURTHER ORDERED awarding the following vehicles to Wife:

1. 2006 Acura. Wife purchased this vehicle post-service, so it is her sole and separate property.
2. 2006 Mitsubishi Eclipse (traded in for Acura post-service), \$7,500.
3. 2003 Yamaha quad, \$800.

Total value: \$8,300.

IT IS FURTHER ORDERED entering judgment in favor of Wife and against Husband in the amount of \$3,343.50 for the difference in the values of vehicles awarded to each.

B. Wife's School Loans. The court finds it equitable that Wife be solely responsible for her student loans. The court finds that those loans were used to pay for Wife's education, which will provide her a financial benefit for the next several decades with very little benefit to Husband.

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IT IS ORDERED that Wife shall be solely responsible for her school loans owing to Sallie Mae and the U.S. Department of Education.

C. Other Debts. The court finds the remaining unsecured debts to be community. Therefore,

IT IS ORDERED that each spouse shall be responsible for 50% of each credit card and unsecured debt in the other spouse's name listed in the pretrial statement at pages 6-7 as of the date of service; for 50% of each credit card and unsecured debt in that spouse's name listed in the pretrial statement at pages 6-7 as of the date of service' and for 100% of any debt incurred after the date of service on any account in that spouse's name.

D. 401(k). Both Husband's 401(k) and the debt on it are community. Therefore,

IT IS ORDERED awarding each spouse 50% of Husband's 401(k), subject to 50% of the loan on the 401(k), valued as of the date that account is divided. If a domestic relations order is necessary to divide the 401(k), the parties may submit a stipulated order or either may apply for the appointment of a special master to prepare the domestic relations order.

E. Community Bank Accounts. The court agrees with Father that the community savings account is community property to be divided between the parties. Because Wife has already taken the funds in that account, Husband is entitled to reimbursement for half.

IT IS ORDERED awarding each party the bank accounts in his/her name.

IT IS FURTHER ORDERED entering judgment in favor of Husband and against Wife in the amount of \$2,404.42.

F. Use Of The House While Divorce Was Pending. The court finds that Husband had exclusive use of the marital residence during the pendency of this action to the exclusion of Wife, and that Husband did not pay either Wife or make payments toward the mortgage during this time. The court does not fault Husband for not paying the mortgage, if that was necessary to effect a short sale. But the fact remains that Husband enjoyed the use of a community asset for seven months, and that the use of that asset has value. This conclusion has nothing to do with whether Wife paid rent while this action was pending; it is Husband's exclusive use and enjoyment of a community asset that entitles Wife to reimbursement. The court further believes Wife that she offered to remain in the marital residence and pay the mortgage, but Husband declined the offer.

The court finds the fair rental value of the marital residence to be roughly equal to the interest on the outstanding mortgage balance. That amount is \$1,330 per month (\$245,702

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balance, multiplied by 65%, divided by 12 months). Husband must reimburse Wife for half that amount for seven months.

IT IS ORDERED entering judgment in favor of Wife and against Husband in the amount of \$4,655.

IT IS FURTHER ORDERED that, if the parties file separate 2009 tax returns, each spouse shall be entitled to claim 50% of any mortgage interest and other tax deductions pertaining to the marital residence.

VI. ATTORNEYS' FEES.

By agreement of the parties,

IT IS ORDERED that each party bear his/her own attorneys' fees, costs and expenses.

FILED: Exhibit Worksheet.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HON. RANDALL H. WARNER

JUDICIAL OFFICER OF THE SUPERIOR COURT

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

TODD ROGERS: Non IV-D Payment Instructions